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8 Attorneys for Plaintiffs
9 WALTER PEREZ ESCOBAR, MARGARITO
GONZALEZ and FRANCISCO CISNEROS-ZAVALA
10

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 WALTER PEREZ ESCOBAR, MARGARITO
GONZALEZ and FRANCISCO CISNEROS-
15 ZAVALA, individually and on behalf of all
others similarly situated,

16 Plaintiffs,

17 v.

18 WHITESIDE CONSTRUCTION
CORPORATION, NMS SUPPLY INC., J.W.
19 CONSTRUCTION, INC. and DAVID R.
WHITESIDE,
20

21 Defendants.
22

Case No. CV-08-1120 WHA

**HARRIS DECLARATION IN
SUPPORT OF PLAINTIFF'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR CERTIFICATION OF
COLLECTIVE ACTION**

Date: August 21, 2008
Time: 8:00 AM
Courtroom: 9
Judge: Hon. William Alsup

23 ALAN HARRIS declares under penalty of perjury as follows:

24 1. I am a member in good standing of the State Bar of California and am one of the
25 attorneys for Plaintiff. I make this declaration in support of Plaintiff's Memorandum in Support of
26 Motion for Certification of a Collective Action. If sworn as a witness, I could competently testify to
27 each and every fact set forth herein from my own personal knowledge.

28 2. I have been and am licensed as an attorney, first in Illinois (1974) and later in California

(1989). I am a graduate of the University of Illinois (A.B. 1970; J.D. 1974). After graduation from law school in January 1974, I was hired as a litigation associate at a plaintiffs' antitrust boutique in Chicago, Illinois: Freeman, Freeman & Salzman. I became a partner in that firm in 1980, and I started my own practice in 1982. I have represented plaintiffs in complex business litigation for over thirty-four years. E.g., Illinois v. Ill. Brick Co., Inc., 431 U.S. 720 (1977); In re My Left Hook, LLC, 129 Fed. Appx. 352 (9th Cir. 2005); Gregory v. SCIE, LLC, 317 F.3d 1050 (9th Cir. 2003); In re Blue Coal Corp., 986 F.2d 687 (3d Cir. 1993); In re Blue Coal Corp., 206 B.R. 730 (M.D. Pa. 1997); U.S. v. Gleneagles Inv. Co., Inc., 584 F. Supp. 671, 689 (M.D. Pa. 1984), aff'd. in part & vacated in part, and remanded sub. nom. U.S. v. Tabor Ct. Realty Corp. 803 F.2d 1288 (3d Cir. 1986), cert. den. sub. nom. McClellan Realty Co. v. U.S. 483 U.S. 1005 (1987); In re Uranium Antitrust Litig., 503 F. Supp. 33 (N.D. Ill. 1981); In re Grand Jury, 469 F. Supp. 666 (M.D. Pa. 1980); In re Anthracite Coal Antitrust Litig., 82 F.R.D. 364 (M.D. Pa. 1979), In re Folding Carton Antitrust Litig., 83 F.R.D. 251 (N.D. Ill. 1978); In re Anthracite Coal Antitrust Litig., 78 F.R.D. 709 (M.D. Pa. 1978); In re Masterkey Antitrust Litig., 1977 U.S. Dist. LEXIS 12948 (D. Conn. 1977) (jury trial for plaintiffs); A. Cherney Disposal Co. v. Chicago & Suburban Refuse Disposal Corp., 68 F.R.D. 383 (N.D. Ill. 1975); In re Cement-Concrete Block, Chicago Area, Grand Jury Proceedings, 381 F.Supp. 1108 (N.D. Ill. 1974); Lisa Frank, Inc. v. Brown, 2006 Westlaw 1237277 (Cal Ct. App. 2006); Parment v. Lapin, 2004 Cal. App. Unpub. LEXIS 5217 (June 1, 2004). I have represented employees in numerous disputes concerning their receipt of pay in connection with their employment, both before the State of California Division of Labor Standards Enforcement and in state and federal courts in California. E.g., Tremblay v. Chevron Stations, Inc., 2008 Westlaw 2020514 (N.D. Cal. May 8, 2008) (certification of collective action); Perez v. Maid Brigade, Inc., 2007 U.S. Dist. LEXIS 78412 (N.D. Cal. 2007) (denial of employer's effort to enforce arbitration clause in employment agreements); Hoffman v. Uncle P Prods., 2008 Cal. App. Unpub. LEXIS 3609 (three-year statute of limitations applies to section 203 claims for continuing wages); Bithell v. E. P. Management Services, LP, 2007 Westlaw 4216854 (Cal. Ct. App. 2007) (sustaining class settlement of entertainment industry employees section 203 and 226 claims against entertainment industry "payroll companies" and studios); DuPont v. Avalon Hollywood Services, Inc., 2007 Westlaw 93386 (Cal. App. 2007); Gregory v. Superior Court, 2004 Westlaw 2786357 (Cal. Ct. App. 2004) (employee of entertainment-industry

“payroll company” not subject to arbitration of dispute under collective bargaining agreement). The undersigned has been appointed lead class counsel in many settled class actions, e.g., Kang v. Albertson’s, Inc., United States District Court for the Central District of California Case No. 2:07-cv-00894-CAS-FFM (\$6,637,500 settlement of labor law claims); Tremblay v. Chevron Stations, Inc., United States District Court for the Northern District of California, Case No. CV 07-6009 EDL (\$4,500,000 settlement of labor-law claims); Jacobs v. CSAA Inter Insurance Bureau, United States District Court for the Northern District of California, Case No. CV 07-00362 MHP (\$850,000 settlement of labor-law claims); Doty v. Costco Wholesale Corp., United States District Court for the Central District of California Case No. CV 05-3241 FMC (JWJx) (\$7,500,000 distributed to class members for FLSA and California Labor Code section 203 and 226 violations); Agatep v. Exxon Mobil Corporation, United States District Court, Central District of California No. CV 05-2342 GAF (\$1,500,000 settlement on behalf of service-station employees in California); Alfano v. International Coffee & Tea, LLC, United States District Court for the Central District of California Case No. CV 04-8996 SVW (CWx) (FLSA and California Labor Code section 226, 510 and 1194 case); Jenne v. On Stage Audio Corporation, United States District Court for the Central District of California Case No. CV 04-2045 CAS (PJWx) (FLSA and California Labor Code section 203 violations); Hansen v. Advanced Tech Security Services, Inc., Los Angeles Superior Court, Case No: BC 367175 (\$1,050,000 settlement of labor-law claims); Ross v. Human Resources, Inc., Los Angeles Superior Court, Case Number BC 351506 (California Labor Code section 203 case); Harrington v. Manpay, LLC, Los Angeles Superior Court No. BC 312171 (\$1,000,000 distributed to class members in a section 510 and section 1194 case); Brackett v. Saatchi & Saatchi, Los Angeles Superior Court Case No. BC 298728 (over \$170,000 distributed to class members in an FLSA and section 203 case); Readmond v. Straw Dogs, Inc., Los Angeles Superior Court No. BC257394 (over \$100,000 distributed to class members in a section 203 case); Greenberg v. EP Management Services, LP, Los Angeles Superior Court Case No. BC 237787 (\$5,348,000 settlement of claims under sections 203 and 226 of California Labor Code); Angel Paws, Inc. v. Avalon Payroll Servs., Inc., Los Angeles Superior Court No. BC 188982 (over \$450,000 distributed to class members in a section 203 case); Saunders v. Metro Image Group, San Diego Superior Court Case No. GIC 809753 (California Labor Code section 203 case); Stratford v. Citicorp West FSB, Monterrey Superior Court

1 Case No. M 81026 (\$950,000 settlement of labor-law claims). The majority of the foregoing cases were
2 undertaken on a contingent-fee basis, and Harris & Ruble has sufficient financial resources to engage in
3 that sort of practice.

4 3. Attached as Exhibit 1 hereto is Plaintiff Francisco Cisneros-Zavala's Declaration in
5 Support of Motion for Certification of Collective Action.

6 4. Attached as Exhibit 2 hereto is Plaintiff Walter Perez Escobar's Declaration in Support of
7 Motion for Certification of Collective Action.

8 5. Attached as Exhibit 3 hereto is Plaintiff Margarito Gonzalez's Declaration in Support of
9 Motion for Certification of Collective Action.

10 6. Attached as Exhibit 4 hereto is a proposed form of Notice to Members of the collective
11 action.

12 7. Attached as Exhibit 5 hereto is an email from defense counsel to the undersigned.

13 8. Attached as Exhibit 6 is a portion of the web site for Gilardi & Co., LLC. ("Gilardi").
14 Gilardi is an experienced class-action administrator with which I have worked in the past. They are fully
15 qualified to discharge the duties involved in providing notice to Class Members and in reporting the
16 results. Based on my informal discovery in this case, I estimate that the proposed Class consists of
17 approximately 300 persons. This range is quite manageable as a collective action.

18 I have read the foregoing Declaration, and the facts set forth therein are true of my own personal
19 knowledge. Executed July 16, 2008, in the County of Los Angeles, State of California.

20
21 /s/

22 Alan Harris
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Index to Exhibits

Exhibit 1: Plaintiff Francisco Cisneros-Zavala's Declaration in Support of Motion for Certification of Collective Action.

Exhibit 2: Plaintiff Walter Perez Escobar's Declaration in Support of Motion for Certification of Collective Action.

Exhibit 3: Plaintiff Margarito Gonzalez's Declaration in Support of Motion for Certification of Collective Action.

Exhibit 4: Proposed form of Notice to Members of the collective action.

Exhibit 5: An e-mail from defense counsel to Alan Harris.

Exhibit 6: A portion of the web site for Gilardi & Co., LLC. ("Gilardi").

PROOF OF SERVICE

I am an attorney for Plaintiff herein, over the age of eighteen years, and not a party to the within action. My business address is Harris & Ruble, 5455 Wilshire Boulevard, Suite 1800, Los Angeles, California 90036. On July 16, 2008, I served the within document(s):

HARRIS DECLARATION IN SUPPORT OF PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR CERTIFICATION OF COLLECTIVE ACTION.

I caused such document(s) to be delivered by hand in person to:

N/A

I caused such document(s) to be delivered by fax or e-mail to:

N/A

I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under that practice, the document(s) would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business, addressed as follows:

N/A

I caused such document(s) to be delivered via the Court's CM/ECF System to:

Paul Simpson -- psimpson@sgilaw.com

I declare under penalty of perjury that the above is true and correct. Executed on July 16, 2008, at Los Angeles, California.

/s/
David Zelenski

1 Alan Harris (SBN 146079)
2 David Zelenski (SBN 231768)
3 HARRIS & RUBLE
4 5455 Wilshire Boulevard, Suite 1800
5 Los Angeles, CA 90036
6 Telephone: (323) 931-3777
7 Facsimile: (323) 931-3366

8 Attorneys for Plaintiffs
9 WALTER PEREZ ESCOBAR, MARGARITO
10 GONZALEZ and FRANCISCO CISNEROS-ZAVALA

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 WALTER PEREZ ESCOBAR,
15 MARGARITO GONZALEZ and
16 FRANCISCO CISNEROS-ZAVALA,
17 individually and on behalf of all others
18 similarly situated,

19 Plaintiffs,

20 v.

21 WHITESIDE CONSTRUCTION
22 CORPORATION, NMS SUPPLY INC.,
23 J.W. CONSTRUCTION, INC. and
24 DAVID R. WHITESIDE,

25 Defendants.
26
27
28

Case No. CV-08-1120 WHA

**PLAINTIFF FRANCISCO
CISNEROS-ZAVALA'S
DECLARATION IN SUPPORT
OF MOTION FOR
CERTIFICATION OF
COLLECTIVE ACTION**

Complaint Filed: 2/25/2008
Trial Date: None Set

1 I, Francisco Cisneros-Zavala, declare under penalty of perjury as follows:

2 (1) If sworn as a witness, I could competently testify to each and every
3 fact set forth herein from my own personal knowledge.

4 (2) I am a Plaintiff in this action and submit this Declaration in support of
5 Plaintiff's Motion for Certification of a Collective Action under the federal Fair
6 Labor Standards Act ("FLSA").

7 (3) I worked as an employee for both NMS Supply, Inc. and J.W.
8 Constructions, Inc. from approximately December 2000 through August 2007.
9 During this period I was employed as a Laborer and worked out of Whiteside
10 Construction Corporation's facilities, which are currently located at 1151 Hensley
11 Street, Richmond, California.

12 (4) Although my paycheck came from either NMS Supply, Inc. or J.W.
13 Constructions, Inc., all of the work I performed was for and with Whiteside
14 Construction Corporation. All of the projects I worked on were at the direction of
15 supervisors and/or employees who worked for Whiteside Construction Corporation.
16 The equipment and trucks I worked on were all marked with the name Whiteside
17 Construction Corporation.

18 (5) While working for NMS Supply, Inc. and J.W. Constructions, Inc., I
19 was required to report for work to Whiteside Construction Corporation's main yard,
20 which is now located at 1151 Hensley Street, Richmond, California. All of the
21 work that I performed was largely the same as that of the other laborers, some of
22 whom I now understand officially worked for Whiteside Construction Corporation,
23 NMS Supply, Inc. and/or J.W. Construction, Inc. The procedures, work and
24 routine, however, was the same for me as it was for the dozens of other workers
25 who worked for Whiteside Construction Corporation, NMS Supply, Inc. and/or
26 J.W. Construction, Inc.

27 (6) I was employed as a non-union laborer and was not subject to any
28 collective bargaining agreement(s).

1 (7) Whiteside Construction Corporation, NMS Supply, Inc., J.W.
2 Construction, Inc. and David R. Whiteside required that I report to the Whiteside
3 Construction Corporation construction yard in Richmond, California by 6:00 A.M.
4 each workday. In many instances, however, I was required to show up even earlier
5 than 6:00 A.M. At that time, I was required to help load the trucks and prepare the
6 equipment for the work that day. Thereafter, I would travel from the Whiteside
7 Construction Corporation construction yard to the project where I was assigned to
8 work. For the past few years I was a driver of the Whiteside Construction
9 Corporation's trucks.

10 (8) I was generally assigned to work a schedule that began at 7:00 A.M.
11 and ended at 3:30 P.M. Whiteside Construction Corporation, NMS Supply, Inc.,
12 J.W. Construction, Inc. and David R. Whiteside did not pay me for any time spent
13 working prior to 7:00 A.M. For example, I was not paid to show up at the
14 Whiteside Construction Corporation yard by 6:00 A.M. (or in many instances
15 earlier than 6:00 A.M.) nor was I compensated for any of the work I performed at
16 the construction yard in the morning. I was also not paid for the travel time
17 between the Whiteside Construction Corporation yard in Richmond, California and
18 the location where I would work on a particular day. Furthermore, we generally
19 worked until 3:30 in the afternoon. I was never compensated for the afternoon or
20 evening time spent driving from the construction site back to the Whiteside
21 Construction Corporation yard in Richmond, California. Once we got back to the
22 Whiteside Construction Corporation yard in Richmond, we were required to help
23 unload the trucks but we were never compensated for any of this work. The only
24 work for which we were compensated was for work after 7:00 A.M. through the
25 time we stopped working on the construction site.

26 (9) Until approximately two years ago, we were never provided with rest
27 breaks. Since then, we were provided with a 10 minute morning rest break, but we
28 were never provided with a 10 minute rest break within the second 4 hours of our

1 workday (i.e. within hours 5 through 8 of a typical workday). Furthermore, many
2 times the supervisors and/or management required that I cut short my 10 minute
3 morning rest break and get back to work.

4 (10) Furthermore, in many instances I was required to work through my 30
5 minute lunch break, and was either not allowed to take a lunch break at all, or, was
6 required to cut short my 30 minute lunch break.

7 (11) In those instances when I didn't drive a Whiteside Construction
8 Corporation truck to the construction site in the morning, I was sometimes required
9 to drive my own vehicle from the Whiteside Construction Corporation yard in
10 Richmond, California to the construction location where I was assigned to work on
11 a particular day. Sometimes the work site would be more than an hour from the
12 Whiteside Construction Corporation yard in Richmond, California. Even though I
13 used my personal vehicle to drive from the Whiteside Construction Corporation
14 yard in Richmond to the construction site, I was never paid a mileage stipend nor
15 was I compensated for my gas or bridge toll.

16 (12) To date, I have not been compensated for all of the work I did for
17 Whiteside Construction Corporation, NMS Supply, Inc., J.W. Construction, Inc.
18 and/or David R. Whiteside. Indeed, I was routinely denied payment of all
19 minimum wages or overtime wages, being compensated only for hours scheduled
20 rather than for actual hours worked. For example, I was routinely not compensated
21 for work performed before and/or after the scheduled work shift.

22 (13) In this collective action, I seek to represent all individuals who were
23 employed by Whiteside Construction Corporation, NMS Supply, Inc., J.W.
24 Construction, Inc. and David R. Whiteside (the "potential members of the collective
25 action").

26 (14) I believe I am similarly situated with the other Plaintiffs and the
27 potential members of the collective action in that: (a) the potential members of the
28 collective action and the Plaintiffs were employed by Whiteside Construction

1 Corporation, NMS Supply, Inc., J.W. Construction, Inc. and/or David R. Whiteside;
2 (b) the potential members of the collective action and Plaintiffs were not paid their
3 wages for actual hours worked, instead we were paid for scheduled hours; (c) the
4 potential members of the collective action and Plaintiffs were not paid for work
5 performed before and/or after a work shift, including work performed at the
6 Whiteside Construction Corporation yard beginning at 6 AM nor were we paid for
7 our travel time to and from the daily construction sites; (d) the potential member of
8 the collective action and Plaintiffs were not provided with a 10 minute break within
9 the second 4 hours of a workday (*i.e.* within hours 5 through 8 of a typical
10 workday); (e) the potential member of the collective action and Plaintiffs were not
11 compensated for work related expenses, including mileage stipends, gas money
12 and/or bridge tolls; (f) as a result of Defendants' practice of withholding
13 compensation for all hours worked, Plaintiffs and the potential members of the
14 collective action have been similarly damaged in that we have not received timely
15 payment in full of our earned wages.

16 (15) In connection with this case, I have met and/or spoken with my co-
17 Plaintiffs and counsel, Alan Harris and David Harris, both before and after the
18 filing of the Complaint, reviewing my work experiences with them, and learning
19 about and accepting my responsibilities as a class representative. I feel as though I
20 can be a good representative of others who have worked for Whiteside Construction
21 Corporation, NMS Supply, Inc., J.W. Construction, Inc. and/or David R. Whiteside.
22 My main concern is that all employees be treated fairly.

23 (16) As a class representative, I understand that I am acting as a
24 representative of other, unnamed class members and that, as such a representative, I
25 owe a duty of good faith to the unnamed class members and I will not act just in my
26 own self-interest.

27 (17) My interest in prosecuting the lawsuit is to secure compensation for all
28 of the members of the class for the Defendants' failure to comply with the labor

1 laws. I have not been promised any special monetary reward or treatment for acting
2 as a class representative. I have no interest adverse to the members of the class as a
3 whole and I believe that my individual claims are typical of the claims of the
4 members of the class as a whole.

5 (18) I intend to continue to take an active part in the litigation, to continue
6 to participate in settlement procedures. I understand that my fiduciary obligations
7 to the class will continue until all trial and/or settlement procedures are concluded
8 and the funds from judgment and/or settlement are distributed to the class members.

9 (19) This declaration that I have signed has been read and translated to me
10 into Spanish, so to ensure that what I am signing is complete and accurate.

11 I have read the foregoing and the facts set forth herein are true and correct of
12 my own personal knowledge.

13 Executed on July 8, 2008, in San Rafael, California.

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15 Francisco Cisneros
16 FRANCISCO CISNEROS-ZAVALA
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1 Alan Harris (SBN 146079)
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6 GONZALEZ and FRANCISCO CISNEROS-ZAVALA

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 WALTER PEREZ ESCOBAR,
MARGARITO GONZALEZ and
12 FRANCISCO CISNEROS-ZAVALA,
individually and on behalf of all others
13 similarly situated,

14 Plaintiffs,

15 v.

16 WHITESIDE CONSTRUCTION
CORPORATION, NMS SUPPLY INC.,
17 J.W. CONSTRUCTION, INC. and
DAVID R. WHITESIDE,

18 Defendants.
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Case No. CV-08-1120 WHA

**PLAINTIFF WALTER PEREZ
ESCOBAR'S DECLARATION IN
SUPPORT OF MOTION FOR
CERTIFICATION OF
COLLECTIVE ACTION**

Complaint Filed: 2/25/2008
Trial Date: None Set

1 I, Walter Perez Escobar, declare under penalty of perjury as follows:

2 (1) If sworn as a witness, I could competently testify to each and every
3 fact set forth herein from my own personal knowledge.

4 (2) I am a Plaintiff in this action and submit this Declaration in support of
5 Plaintiff's Motion for Certification of a Collective Action under the federal Fair
6 Labor Standards Act ("FLSA").

7 (3) I worked as an employee of NMS Supply, Inc. from approximately
8 November 2007 through December 2007. During this period I was employed as a
9 Laborer and worked out of Whiteside Construction Corporation's facilities, which
10 are located at 1151 Hensley Street, Richmond, California.

11 (4) Although my paycheck came from NMS Supply, Inc., all of the work I
12 performed was for and with Whiteside Construction Corporation. All of the
13 projects I worked on were at the direction of supervisors and/or employees who
14 worked for Whiteside Construction Corporation. The equipment and trucks I
15 worked on were all marked with the name Whiteside Construction Corporation.

16 (5) While working for NMS Supply, I was required to report for work to
17 Whiteside Construction Corporation's main yard, which is located at 1151 Hensley
18 Street, Richmond, California. All of the work that I performed was largely the
19 same as that of the other laborers, some of whom I now understand officially
20 worked for Whiteside Construction Corporation, NMS Supply, Inc. and/or J.W.
21 Construction, Inc. The procedures, work and routine, however, was the same for
22 me as it was for the dozens of other workers who worked for Whiteside
23 Construction Corporation, NMS Supply, Inc. and/or J.W. Construction, Inc.

24 (6) I was employed as a non-union laborer and was not subject to any
25 collective bargaining agreement(s).

26 (7) Whiteside Construction Corporation, NMS Supply, Inc. and David R.
27 Whiteside required that I report to the Whiteside Construction Corporation
28 construction yard in Richmond, California by 6:00 A.M. each workday. In certain

1 instances I was required to show up even earlier than 6:00 A.M. At that time, I was
2 required to help load the trucks and prepare the equipment for the work that day.
3 Thereafter, I would travel from the Whiteside Construction Corporation
4 construction yard to the project where I was assigned to work.

5 (8) I was generally assigned to work a schedule that began at 7:00 A.M.
6 and ended at 3:30 P.M. Whiteside Construction Corporation, NMS Supply, Inc.
7 and David R. Whiteside did not pay me for any time spent working prior to 7:00
8 A.M. For example, I was not paid to show up at the Whiteside Construction
9 Corporation yard by 6:00 A.M. (or in many instances earlier than 6:00 A.M.) nor
10 was I compensated for any of the work I performed at the construction yard in the
11 morning. I was also not paid for the travel time between the Whiteside
12 Construction Corporation yard in Richmond, California and the location where I
13 would work on a particular day. Furthermore, we generally worked until 3:30 in
14 the afternoon. I was never compensated for the afternoon or evening time spent
15 driving from the construction site back to the Whiteside Construction Corporation
16 yard in Richmond, California. Once we got back to the Whiteside Construction
17 Corporation yard in Richmond, we were required to help unload the trucks but we
18 were never compensated for any of this work. The only work for which we were
19 compensated was for work after 7:00 A.M. through the time we stopped working
20 on the construction site.

21 (9) Furthermore, I was never provided with a 10 minute rest break within
22 the second 4 hours of my workday (i.e. within hours 5 through 8 of a typical
23 workday).

24 (10) Furthermore, in many instances I was required to work through my 30
25 minute lunch break, and was either not allowed to take a lunch break, or, was
26 required to cut short my 30 minute lunch break.

27 (11) Furthermore, many times the supervisors and/or management required
28 that I cut short my 10 minute morning rest break.

1 (12) In many instances I was required to drive my own vehicle from the
2 Whiteside Construction Corporation yard in Richmond, California to the
3 construction location where I was assigned to work on a particular day. Sometimes
4 the work site would be more than an hour from the Whiteside Construction
5 Corporation yard in Richmond, California. Even though I used my personal vehicle
6 to drive from the Whiteside Construction Corporation yard in Richmond to the
7 construction site, I was never paid a mileage stipend or bridge toll and I was only
8 once compensated for my gas.

9 (13) To date, I have not been compensated for all of the work I did for
10 Whiteside Construction Corporation, NMS Supply, Inc. and/or David R. Whiteside.
11 Indeed, I was routinely denied payment of all minimum wages or overtime wages,
12 being compensated only for hours scheduled rather than for actual hours worked.
13 As described above, I was routinely not compensated for work performed before
14 and/or after the scheduled work shift.

15 (14) In this collective action, I seek to represent all individuals who were
16 employed by Whiteside Construction Corporation, NMS Supply, Inc., J.W.
17 Construction, Inc. and David R. Whiteside (the "potential members of the collective
18 action").

19 (15) I believe I am similarly situated with the other Plaintiffs and the
20 potential members of the collective action in that: (a) the potential members of the
21 collective action and the Plaintiffs were employed by Whiteside Construction
22 Corporation, NMS Supply, Inc., J.W. Construction, Inc. and/or David R. Whiteside;
23 (b) the potential members of the collective action and Plaintiffs were not paid their
24 wages for actual hours worked, instead we were paid for scheduled hours; (c) the
25 potential members of the collective action and Plaintiffs were not paid for work
26 performed before and/or after a work shift, including work performed at the
27 Whiteside Construction Corporation yard beginning at 6 AM nor were we paid for
28 our travel time to and from the daily construction sites; (d) the potential member of

1 the collective action and Plaintiffs were not provided with a 10 minute break within
2 the second 4 hours of a workday (*i.e.* within hours 5 through 8 of a typical
3 workday); (e) the potential member of the collective action and Plaintiffs were not
4 compensated for work related expenses, including mileage stipends, gas money
5 and/or bridge tolls; (f) as a result of Defendants' practice of withholding
6 compensation for all hours worked, Plaintiffs and the potential members of the
7 collective action have been similarly damaged in that we have not received timely
8 payment in full of our earned wages.

9 (16) In connection with this case, I have met and/or spoken with my co-
10 Plaintiffs and counsel, Alan Harris and David Harris, both before and after the
11 filing of the Complaint, reviewing my work experiences with them, and learning
12 about and accepting my responsibilities as a class representative. I feel as though I
13 can be a good representative of others who have worked for Whiteside Construction
14 Corporation, NMS Supply, Inc., J.W. Construction, Inc. and/or David R. Whiteside.
15 My main concern is that all employees be treated fairly.

16 (17) As a class representative, I understand that I am acting as a
17 representative of other, unnamed class members and that, as such a representative, I
18 owe a duty of good faith to the unnamed class members and I will not act just in my
19 own self-interest.

20 (18) My interest in prosecuting the lawsuit is to secure compensation for all
21 of the members of the class for the Defendants' failure to comply with the labor
22 laws. I have not been promised any special monetary reward or treatment for acting
23 as a class representative. I have no interest adverse to the members of the class as a
24 whole and I believe that my individual claims are typical of the claims of the
25 members of the class as a whole.

26 (19) I intend to continue to take an active part in the litigation, to continue
27 to participate in settlement procedures. I understand that my fiduciary obligations
28 to the class will continue until all trial and/or settlement procedures are concluded

1 and the funds from judgment and/or settlement are distributed to the class members.

2 (20) This declaration that I have signed has been read and translated to me
3 into Spanish, so to ensure that what I am signing is complete and accurate.

4 I have read the foregoing and the facts set forth herein are true and correct of
5 my own personal knowledge.

6 Executed on July 8, 2008, in San Rafael, California.

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9 WALTER PEREZ ESCOBAR
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1 Alan Harris (SBN 146079)
2 David Zelenski (SBN 231768)
3 HARRIS & RUBLE
4 5455 Wilshire Boulevard, Suite 1800
5 Los Angeles, CA 90036
6 Telephone: (323) 931-3777
7 Facsimile: (323) 931-3366

8 Attorneys for Plaintiffs
9 WALTER PEREZ ESCOBAR, MARGARITO
10 GONZALEZ and FRANCISCO CISNEROS-ZAVALA

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 WALTER PEREZ ESCOBAR,
15 MARGARITO GONZALEZ and
16 FRANCISCO CISNEROS-ZAVALA,
17 individually and on behalf of all others
18 similarly situated,

19 Plaintiffs,

20 v.

21 WHITESIDE CONSTRUCTION
22 CORPORATION, NMS SUPPLY INC.,
23 J.W. CONSTRUCTION, INC. and
24 DAVID R. WHITESIDE,

25 Defendants.
26
27
28

Case No. CV-08-1120 WHA

**PLAINTIFF MARGARITO
GONZALEZ'S DECLARATION
IN SUPPORT OF MOTION FOR
CERTIFICATION OF
COLLECTIVE ACTION**

Complaint Filed: 2/25/2008
Trial Date: None Set

1 I, Margarito Gonzalez, declare under penalty of perjury as follows:

2 (1) If sworn as a witness, I could competently testify to each and every
3 fact set forth herein from my own personal knowledge.

4 (2) I am a Plaintiff in this action and submit this Declaration in support of
5 Plaintiff's Motion for Certification of a Collective Action under the federal Fair
6 Labor Standards Act ("FLSA").

7 (3) I worked as an employee for both J.W. Construction, Inc. and
8 Whiteside Construction Corporation from approximately April 1991 through
9 February 2007. During this period I was employed as a Laborer and worked out of
10 Whiteside Construction Corporation's facilities, which are currently located at 1151
11 Hensley Street, Richmond, California.

12 (4) Although my paycheck came from either J.W. Construction, Inc. and
13 Whiteside Construction Corporation, all of the work I performed was for and with
14 Whiteside Construction Corporation. All of the projects I worked on were at the
15 direction of supervisors and/or employees who worked for Whiteside Construction
16 Corporation. The equipment and trucks I worked on were all marked with the name
17 Whiteside Construction Corporation.

18 (5) While working for J.W. Construction, Inc. and Whiteside Construction
19 Corporation, I was required to report for work to Whiteside Construction
20 Corporation's main yard, which is now located at 1151 Hensley Street, Richmond,
21 California. All of the work that I performed was largely the same as that of the
22 other laborers, some of whom I now understand officially worked for Whiteside
23 Construction Corporation, NMS Supply, Inc. and/or J.W. Construction, Inc. The
24 procedures, work and routine, however, was the same for me as it was for the
25 dozens of other workers who worked for Whiteside Construction Corporation,
26 NMS Supply, Inc. and/or J.W. Construction, Inc.

27 (6) For the last year of my employment while I worked for Whiteside
28 Construction Corporation, I was employed as a union laborer. I now understand

1 that in my capacity as a union worker, I was part of a collective bargaining
2 agreement. I have never seen a copy of the collective bargaining agreement and I
3 am not aware of its contents. Prior to working for Whiteside Construction
4 Corporation, I was employed as a non-union laborer.

5 (7) Whiteside Construction Corporation, J.W. Construction, Inc. and
6 David R. Whiteside required that I report to the Whiteside Construction
7 Corporation's construction yard in Richmond, California by 6:00 A.M. each
8 workday. In many instances, however, I was required to show up even earlier than
9 6:00 A.M. At that time, I was required to help load the trucks and prepare the
10 equipment for the work that day. Thereafter, I would travel from the Whiteside
11 Construction Corporation construction yard to the project where I was assigned to
12 work.

13 (8) I was generally assigned to work a schedule that began at 7:00 A.M.
14 and ended at 3:30 P.M. Whiteside Construction Corporation, J.W. Construction,
15 Inc. and David R. Whiteside did not pay me for any time spent working prior to
16 7:00 A.M. For example, I was not paid to show up at the Whiteside Construction
17 Corporation yard by 6:00 A.M. (or in many instances earlier than 6:00 A.M.) nor
18 was I compensated for any of the work I performed at the construction yard in the
19 morning. I was also not paid for the travel time between the Whiteside
20 Construction Corporation yard in Richmond, California and the location where I
21 would work on a particular day. Furthermore, we generally worked until 3:30 in
22 the afternoon. I was never compensated for the afternoon or evening time spent
23 driving from the construction site back to the Whiteside Construction Corporation
24 yard in Richmond, California. Once we got back to the Whiteside Construction
25 Corporation yard in Richmond, we were required to help unload the trucks but we
26 were never compensated for any of this work. The only work for which we were
27 compensated was for work after 7:00 A.M. through the time we stopped working
28 on the construction site.

1 (9) Until approximately two years ago, we were never provided with rest
2 breaks. Since then, we were provided with a 10 minute morning rest break, but we
3 were never provided with a 10 minute rest break within the second 4 hours of our
4 workday (i.e. within hours 5 through 8 of a typical workday). Furthermore, many
5 times the supervisors and/or management required that I cut short my 10 minute
6 morning rest break and get back to work.

7 (10) Furthermore, in many instances I was required to work through my 30
8 minute lunch break, and was either not allowed to take a lunch break at all, or, was
9 required to cut short my 30 minute lunch break.

10 (11) I was sometimes required to drive my own vehicle from the Whiteside
11 Construction Corporation yard in Richmond, California to the construction location
12 where I was assigned to work on a particular day. Sometimes the work site would
13 be more than an hour from the Whiteside Construction Corporation yard in
14 Richmond, California. Even though I used my personal vehicle to drive from the
15 Whiteside Construction Corporation yard in Richmond to the construction site, I
16 was never paid a mileage stipend nor was I compensated for my gas or bridge toll.

17 (12) To date, I have not been compensated for all of the work I did for
18 Whiteside Construction Corporation, J.W. Construction, Inc. and/or David R.
19 Whiteside. Indeed, I was routinely denied payment of all minimum wages or
20 overtime wages, being compensated only for hours scheduled rather than for actual
21 hours worked. As described above, I was routinely not compensated for work
22 performed before and/or after the scheduled work shift.

23 (13) In this collective action, I seek to represent all individuals who were
24 employed by Whiteside Construction Corporation, NMS Supply, Inc., J.W.
25 Construction, Inc. and David R. Whiteside (the "potential members of the collective
26 action").

27 (14) I believe I am similarly situated with the other Plaintiffs and the
28 potential members of the collective action in that: (a) the potential members of the

1 collective action and the Plaintiffs were employed by Whiteside Construction
2 Corporation, NMS Supply, Inc., J.W. Construction, Inc. and/or David R. Whiteside;
3 (b) the potential members of the collective action and Plaintiffs were not paid their
4 wages for actual hours worked, instead we were paid for scheduled hours; (c) the
5 potential members of the collective action and Plaintiffs were not paid for work
6 performed before and/or after a work shift, including work performed at the
7 Whiteside Construction Corporation yard beginning at 6 AM nor were we paid for
8 our travel time to and from the daily construction sites; (d) the potential member of
9 the collective action and Plaintiffs were not provided with a 10 minute break within
10 the second 4 hours of a workday (*i.e.* within hours 5 through 8 of a typical
11 workday); (e) the potential member of the collective action and Plaintiffs were not
12 compensated for work related expenses, including mileage stipends, gas money
13 and/or bridge tolls; (f) as a result of Defendants' practice of withholding
14 compensation for all hours worked, Plaintiffs and the potential members of the
15 collective action have been similarly damaged in that we have not received timely
16 payment in full of our earned wages.

17 (15) In connection with this case, I have met and/or spoken with my co-
18 Plaintiffs and counsel, Alan Harris and David Harris, both before and after the
19 filing of the Complaint, reviewing my work experiences with them, and learning
20 about and accepting my responsibilities as a class representative. I feel as though I
21 can be a good representative of others who have worked for Whiteside Construction
22 Corporation, NMS Supply, Inc., J.W. Construction, Inc. and/or David R. Whiteside.
23 My main concern is that all employees be treated fairly.

24 (16) As a class representative, I understand that I am acting as a
25 representative of other, unnamed class members and that, as such a representative, I
26 owe a duty of good faith to the unnamed class members and I will not act just in my
27 own self-interest.

28 (17) My interest in prosecuting the lawsuit is to secure compensation for all

1 of the members of the class for the Defendants' failure to comply with the labor
2 laws. I have not been promised any special monetary reward or treatment for acting
3 as a class representative. I have no interest adverse to the members of the class as a
4 whole and I believe that my individual claims are typical of the claims of the
5 members of the class as a whole.

6 (18) I intend to continue to take an active part in the litigation, to continue
7 to participate in settlement procedures. I understand that my fiduciary obligations
8 to the class will continue until all trial and/or settlement procedures are concluded
9 and the funds from judgment and/or settlement are distributed to the class members.

10 (19) This declaration that I have signed has been read and translated to me
11 into Spanish, so to ensure that what I am signing is complete and accurate.

12 I have read the foregoing and the facts set forth herein are true and correct of
13 my own personal knowledge.

14 Executed on July 8, 2008, in San Rafael, California.

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17 MARGARITO GONZALEZ
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**NOTICE OF PENDENCY OF FEDERAL LAW FAIR LABOR
STANDARDS ACT COLLECTIVE ACTION**

Escobar v. Whiteside Construction Corporation, NMS Supply, Inc., J.W.
Construction, Inc. and David R. Whiteside
United States District Court Case No. CV-08-1120 WHA (N.D. Cal.)

PLEASE READ THIS NOTICE CAREFULLY

THIS NOTICE RELATES TO A FEDERAL LAW FAIR LABOR STANDARDS ACT COLLECTIVE ACTION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS AS A POTENTIAL MEMBER OF THE COLLECTIVE ACTION (IF YOU OPT IN).

AS EXPLAINED IN MORE DETAIL BELOW, TO PARTICIPATE IN THE COLLECTIVE ACTION YOU MUST OPT IN BY [insert date – 60 days from mailing]. IF YOU FAIL TO TIMELY OPT IN, YOU WILL RECEIVE NOTHING UNDER THIS LAWSUIT.

Pursuant to an Order of the United States District Court (the "Court"), dated August __, 2008, a federal law collective action has been certified. Information regarding your address has been obtained under the auspices of a Court Order and is being handled in a confidential manner, for use in this case only. In Escobar v. Whiteside Construction Corporation, NMS Supply, Inc., J.W. Construction, Inc. and David R. Whiteside, United States District Court Case No. CV-08-1120 WHA (N.D. Cal.) (the "Litigation"), Plaintiff has filed suit on your behalf, seeking damages for certain similarly situated employees. The Litigation may provide payments to Members of the Collective Action who file Opt In Forms with respect to the collective action. You will be bound by the result of the collective action, but only if you opt in.

This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Litigation or the merits of the claims or defenses asserted. This Notice is to advise you of the case and your rights in connection with it.

A. PURPOSE OF THIS NOTICE

The Court has certified the following collective action (the "Collective Action Class"):

All natural persons who worked as employees in California at any time during the period from February 25, 2004, through August 21, 2008, for Whiteside Construction Corporation, NMS Supply Inc. and/or J.W. Construction, Inc.

You may be a member of the Collective Action Class. The purpose of this notice is to inform you about the matter and to discuss your rights and options with respect to the Litigation.

B. DESCRIPTION OF THE LITIGATION

Plaintiff contends that members of the Collective Action Class were not provided wage payments in accordance with the federal Fair Labor Standards Act ("FLSA"), thereby entitling members of the Collective Action Class to back wages, liquidated damages under the FLSA, and/or interest.

Please be advised that the Court has not ruled on the merits of Plaintiff's claims or Defendants' defenses. If you "opt in," you may be asked to participate in some court proceedings. There is

a possibility that Collective Action Class Members will recover nothing.

The attorneys representing the Collective Action Class ("Class Counsel") are:

David S. Harris
NORTH BAY LAW GROUP
901 Irwin Street
San Rafael, CA 94901
Telephone: (415) 460-5300
Facsimile: (415) 460-5303

David Zelenski
HARRIS & RUBLE
5455 Wilshire Boulevard, Suite 1800
Los Angeles, CA 90036
Telephone: (323) 931-3777
Facsimile: (323) 931-3366

C. TO PARTICIPATE IN THE COLLECTIVE ACTION

Plaintiff filed a lawsuit in which he claims that he is entitled to certain monetary compensation under the FLSA when an employer fails to make proper payment of wages. You may be entitled to collect such compensation if you join the lawsuit and if the lawsuit is successful. If you do not join the lawsuit, you will not receive any benefit from the suit in the event that it is successful. You would, however, have the right, should you so choose, to file your own separate lawsuit, however it may be subject to the applicable statute of limitations.

If you desire to join the lawsuit, you must completely fill out and sign the attached form. In order to be valid, your request must be postmarked not later than [date – 60 days from mailing].

D. IF YOU DO NOTHING

If you do nothing in response to this Notice, you will not receive any proceeds under the collective action, but you will have the right to adjudicate your own claims, if any, under the federal FLSA. But, if you opt in and if this case is not successful, you will be barred from asserting further claims on the same legal basis against Defendants

You have the right, if you so desire, to enter an appearance in this Litigation through your own counsel.

E. ADDITIONAL INFORMATION

This Notice only summarizes the Litigation and other related matters. For more information, you may review the Court's files at the Office of the Clerk of the Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California (16th Floor) 94102, during business hours of each business day. You may also review the Court's files at pacer.psc.uscourts.gov. Any questions regarding this Notice or this Opt In Form should be addressed to Class Counsel at the address and telephone number set forth above. If your address changes or is different from the one on the envelope enclosing this Notice, please promptly notify Gilardi & Co., LLC at the address listed below. Please note that your contact information was obtained for purposes of this litigation only, as ordered by the Court, and

shall not be utilized for any other purpose other than this pending litigation. Gilardi & Co., LLC shall use all reasonable means to protect your information.

F. REMINDER AS TO TIME LIMITS

If you wish to submit this Opt In Form, you must complete the balance of this page and timely return it to Gilardi & Co., LLC. Your Form must be postmarked on or before [date – 60 days after mailing] or it will be considered untimely. You must mail it to:

Gilardi & Co., LLC
[insert address]

I wish to join the lawsuit as a party plaintiff under the FLSA.

Yes [☐]

Please print your full name, present address, and telephone number, and then sign this form and return it postmarked by [date – 60 days after mailing].

Name _____

Address _____

Telephone number: _____

Signature: _____

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

Alan Harris

From: Simpson, Paul [psimpson@sgilaw.com]
Sent: Tuesday, July 15, 2008 1:46 PM
To: Alan Harris; David Harris - External Contact
Subject: Escobar et al v. Whiteside Construction et al--Number of potential class members

Gentlemen,

Excluding field construction supervisors, the number of potential class members in the various categories going back four years from the filing date of the complaint are as follows:

Whiteside Construction:

81 cement masons

64 laborers

55 carpenters

JW Construction Inc. and NMS Supply , Inc.:

92 misc. construction workers

Please provide me the name of the field supervisor you intend to depose in addition to david Whiteside.

Regards,

Paul V. Simpson

EXHIBIT 5-000000001

7/16/2008



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